In the Matter of:

THERON T. MATTHEWS, **ARB CASE NO. 08-038**

COMPLAINANT, **ALJ CASE NO. 2007-SOX-056**

v. **DATE: November 26, 2008**

LABARGE, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Theron T. Matthews, *pro se*, Mounds, Oklahoma

For the Respondent:
Hollye Stolz Atwood, *Bryan Cave LLP*, St. Louis, Missouri

FINAL DECISION AND ORDER

BACKGROUND

Theron T. Matthews was LaBarge, Inc.'s Corporate Director of Operations. LaBarge manufactures electronic equipment systems that government contractors use. Matthews filed a complaint with the United States Department of Labor in which he contended that LaBarge discharged him in March 2007 because he informed his supervisors and other staff that the company was engaging in fraudulent activity. This action, alleges Matthews, violates the employee protection section of the Sarbanes-Oxley Act of 2002, which prohibits covered employers from retaliating against employees who provide information or assist in investigations related to listed categories of fraud or securities violations.[1]

[1] 18 U.S.C.A. § 1514A (West Supp. 2006).

In August and October 2007 the Department of Labor Administrative Law Judge assigned to hear and decide this case issued orders requiring Matthews to index and organize thousands of documents contained on a CD that Matthews had submitted to LaBarge during discovery. In October the ALJ also ordered the parties to complete discovery by November 23 and exchange their pre-hearing submissions by November 29. That order warned that "[f]ailure to comply with this pre-hearing order without good cause may result in the dismissal of the proceeding or the imposition of other appropriate sanctions against the non-complying party."

When Matthews did not comply with the discovery orders, LaBarge moved for sanctions, asking the ALJ to either dismiss Matthews's complaint or prohibit him from using the documents he had submitted on the CD. The ALJ ordered Matthews to show cause why he should not impose sanctions. Matthews responded that he had been busy and did not have time to comply. Two weeks later, when Matthews still had not complied with the order to index and organize the documents, the ALJ ordered that Matthews would not be permitted to introduce evidence at the hearing that pertained to those documents. And a week later, after LaBarge moved to dismiss because Matthews had not complied with the order regarding pre-hearing submissions, the ALJ again ordered Matthews to show cause why sanctions, including dismissal, should not be imposed. Matthews responded. He characterized the order to show cause as "unjustified and unlawful" and accused the ALJ of being arrogant, inaccurate, prejudiced, and having a "pro-corporate bias."

In his December 4, 2007 Order of Dismissal, the ALJ found that Matthews blatantly failed to comply with the discovery and pre-hearing orders, had not shown cause for failing to comply, had been warned that dismissal was possible for non-compliance, and that other sanctions had not, and would not, resolve this matter. Therefore, he granted LaBarge's motion to dismiss.[2] Matthews petitioned us to review the ALJ's decision. We have jurisdiction to do so.[3] The Administrative Review Board (ARB) reviews an ALJ's findings of fact in SOX cases under the substantial evidence standard.[4] But the ARB reviews the ALJ's conclusions of law de novo.[5]

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[2] *Matthews v. LaBarge, Inc.*, 2007-SOX-056 (ALJ Dec. 4, 2007). This decision is available at the Office of Administrative Law Judges website, www.oalj.dol.gov.

[3] Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002).

[4] 29 C.F.R. § 1980.110(c) (2007).

[5] *Henrich v. Ecolab, Inc.*, ARB No. 05-030, ALJ No. 2004-SOX-051, slip op. at 8 (ARB June 29, 2006).

DISCUSSION

Labor Department regulations permit an ALJ to "take such action . . . as is just," including dismissing the complaint, when a party fails to comply with a discovery order, or "any other order" of the ALJ.[6] But dismissing a complaint for failure to comply with an ALJ's order is a "very severe penalty to be assessed in only the most extreme cases."[7] The ALJ gave Matthews adequate opportunity to comply with his orders. The ALJ also gave him two opportunities to show cause why he should not impose sanctions. Furthermore, the ALJ had warned Matthews about the consequences of failing to comply with the discovery orders. "If an ALJ is to have any authority to enforce prehearing orders, and so to deter others from disregarding theses orders, sanctions such as dismissal or default judgments must be available when parties flagrantly fail to comply."[8] To hold otherwise would render the discovery process meaningless and vitiate an ALJ's duty to conclude cases fairly and expeditiously.[9]

We have reviewed the entire record herein. It supports the ALJ's findings that Matthews blatantly failed to comply with the ALJ's orders and did not show cause why sanctions should not follow. Matthews's briefs provide no basis for us to reverse the ALJ. Therefore, since the ALJ's Order of Dismissal thoroughly explains his reasons for dismissing Matthews's complaint, and since he applied the correct standard and precedent in concluding that dismissal was warranted, we adopt the ALJ's decision as our own. Accordingly, Matthews's complaint is **DISMISSED.**

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

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6 29 C.F.R. § 18.6(2)(v).

7 *Yarborough v. U. S. Dep't of the Army, Chemical Agent Munitions Disposal Sys. (CAMDS)*, ARB No. 05-117, ALJ No. 2004-SDW-003, slip op. at 6 (ARB August 30, 2007). *See also, e.g., Howick v. Campbell-Ewald Co.*, ARB Nos. 03-156, 04-065, ALJ Nos. 2003-STA-006, 2004-STA-007, slip op at 7 (ARB Nov. 30, 2004) (citing *Conkle v. Potter*, 352 F.3d 1333, 1337 (10th Cir. 2003); *Ehrehaus v. Reynolds*, 964 F.2d 916, 920 (10th Cir.1992)).

8 *Cynthia E. Aiken*, BSCA No. 92-06 (July 31, 1992).

9 *Supervan, Inc.*, ARB No. 00-008, ALJ No. 1994-SCA-014, slip op. at 6 (Sept. 30, 2004).